***THE HONBLE SRI JUSTICE C.Y. SOMAYAJULU**

+W.P. No. 1313 OF 2005

%Dated 13-04-2005

Smt.Mahaboob Mastana Begum, alias Muntaz Begum,

w/o M.A.Gaffor, r/o Hyderabad.

..... PETITIONER

VERSUS

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1 Government of A.P., rep., by its Secretary, Revenue Department,

Secretariat Building, Hyderabad.
2 Chairman, Zilla Parishad, West Godavari District at Eluru.
3 Chief Executive Officer, Zilla Parishad, West Godavari District at Eluru.
4 M.N.Anssari, s/o Md.Shabuddin,
H.No.290, Shiridi Sai Colony, Near Mandal Office, Beeramguda,

Patancheru (M), Medak District.
5 B.M.Saduruddin, s/o Md.Shabuddin,
H.No.120, Gayathri Hills, Yousufguda, Hyderabad.
6 Md.Ghouse Mohiddin, s/o Md.Shabuddin,
H.No.85/8, Sector-8, Opp:Satya Sai School, M.V.P.Colony, Visakhapatnam.
7 Mahaboob Haseena Begum, w/o Md.Ismail,
H.No.119/A, Gayathri Hills, Hyderabad.
8 Mahaboob Khazima Begum, w/o Md.Aziz,
Shantinagar, North Lallaguda, Secunderabad.
9 Mohd.Naimuddin, s/o Md.Shabuddin,
H.No.217-A, Krishna Apts., Ameerpet Cross Roads, Hyderabad.
10 Mohd.Fhazaluddin, s/o Md.Shabuddin,
M.I.G.Plot No.3031, Phase-2, B.H.E.L., Ramachandrapuram,

Medak District.
11 Ahammed Mohiddin Mohammad, s/o Md.Shabuddin,
H.No.(D.No.)531, Gayathri Hills, Hyderabad.
12 Mohd.Moise Kairuddin, s/o Md.Shabuddin,
c/o late Dr.Sultan, H.No.11-1-71, Sultan Street, Pitapuram, East

Godavari District.

..... RESPONDENTS

! Counsel for Petitioner: Smt. K. Sesharajyam

^Counsel for Respondents1 to 3: G.P. for Panchayat Raj &

Rural Development

^Counsel for the Respondents 4 to 6 & 8 to 12:

V.L.N. Gopala Krishana Murthy

^Counsel for the Respondent No.7: Mr.D.V.Sitharam Murthy

<GIST:

> HEAD NOTE:

? Cases referred

1. **(1999) 6 Supreme Court Cases 237**
2. **(2000) 7 Supreme Court Cases 529**

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 1313 of 2005

Between:

Smt.Mahaboob Mastana Begum, alias Muntaz Begum,

w/o M.A.Gaffor, r/o Hyderabad.

..... PETITIONER

AND

1 Government of A.P., rep., by its Secretary, Revenue Department,

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Godavari District.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring that the proceedings in Rc.No.02-8275/96, dated 21-01-2005 issued by the 3rd respondent herein i.e., Chief Executive Officer, Zilla Parishad, West Godavari District, Eluru wherein the 3rd respondent has cancelled Transfer of "Tree Patta" in respect of 230 Coconut trees, 3 Tamarind Trees situated on the road margin of Mulaparru-Achanta, Mulaparru-Deva Road, West Godavari District as illegal and un-enforce by directing the respondents not to interfere with the rights of the petitioner over the 230 Trees of Coconut and 3 Tamarind Trees situated in road Margins of Mulaparru-Achanta and Mulaparru Deva Road, West Godavari District and pass such other order or orders

Counsel for the Petitioner: SMT.K.SESHARAJYAM

Counsel for the Respondents1 to 3: G.P. FOR PANCHAYAT RAJ &

RURAL DEVOLPMENT

Counsel for the Respondents 4 to 6 & 8 to 12: V.L.N.Gopala Krishna

Murthy

Counsel for the Respondent No.7: Mr.D.V.Sitharam Murthy

The Court made the following

ORDER:

The admitted facts in this case are, Smt.Azizumunnisa Begum, w/o. Mohd. Shabuddin i.e., mother of petitioner and the unofficial respondents 4 to 12 (hereinafter referred to as the deceased) was granted 99 years lease in respect of 230 coconut trees and 3 tamarind trees, situated on the Mulaparru-Achanta and – Deva road, way back on 04-10-55 by the third respondent-Zilla Parishad. Subsequent to the death of the deceased on
23-02-1999, in pursuance of the application of the petitioner that she became entitled to the lease granted to her mother i.e., the deceased as per the registered Will executed by the deceased, third respondent even without issuing notice to the other heirs of the deceased i.e., unofficial respondents 4 to 12, passed orders transferring the lease in the name of the petitioner on 09-04-2002. After coming to know that fact, respondents 4 to 12 made an application on 05-12-2002, objecting to the transfer of lease without notice to them to the petitioner, and made a request to transfer the lease to all the heirs of the deceased. Therefore, by the proceedings in Rc.No.02-8257/95, dated 09-04-2002, third respondent cancelled the transfer of lease in favour of the petitioner, and observed that all the legal heirs of the deceased are entitled to equal share in the rights of the deceased and communicated that order to the petitioner, through his proceedings in Rc.No.02/8275/96 Z.P., dated 21-01-2005, with a direction to handover the trees. That order is questioned in this writ petition.

(2) The main contention of the learned counsel for the petitioner is that since there is a gross violation of the principles of natural justice, as respondents 2 & 3 did not afford an opportunity of being heard to the petitioner, on the petition submitted by respondents 4 to 12 the order impugned is liable to be set aside, more so because, some of the brothers and sisters of the petitioner who filed W.P.No.3199 of 2003 questioning the transfer of lease in favour of the petitioner, had withdrawn that petition resulting in its dismissal on 29-09-2004.

(3) The contention of the learned counsel for the respondents 4,5,8, 10 and 11 is that

since the deceased was a Muslim who has no absolute right to execute a Will, before transferring the lease held by the deceased in favour of the petitioner, third respondent ought to have issued notice to respondents 4 to 12 for their comments on the Will said to have been executed by the deceased. It is his contention that since transfer of the lease in favour of the petitioner, without notice to respondents 4 to 12, is invalid and irregular and since, setting aside of the order impugned results in revival of an invalid and irregular order petitioner is not entitled to any relief, and relied on ***M.C. Mehta v. Union of India*** and ***Aligarh Muslim University v. Mansoor Alikhan***.

(4) The fact that respondents 4 to 12, who are brothers and sisters of the petitioner, were not given an opportunity of being heard, before transfer of the lease in favour of the petitioner is not denied or disputed. It is also not in dispute that petitioner was not given an opportunity of being heard before passing the order impugned cancelling the transfer made in her name earlier. What is sauce to the goose is also sauce to gander. Petitioner who complains of breach of principles of natural justice seems to have forgotten that she obtained the transfer of lease in her name without notice to respondents
4 to 12, who are her brothers and sisters. So when she claims that cancellation of lease in her favour without notice to her is unsustainable she should know that transfer of lease in her favour without notice to respondents 4 to 12 also is unsustainable.

In para 15 of ***M.C. Mehta***'s case (1 supra), the Supreme Court observed as follows:

> "15. It is true that whenever there is a clear violation of the principles of natural justice, the courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this Court because the orders of the Department were consequential to the orders of this Court. The question however is whether the Court in exercise of its *discretion* under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no *de facto prejudice* is established. On the facts of this case, can this Court not take into consideration the fact that any such declaration regarding the 10-03-1999 order will restore an earlier order dated 30-07-1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order dated 10-03-1999 is set aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather than on for which it is has no right after the passing of the latter order of this Court dated 07-04-1998?"

and held in para 24 as follows:

> "in our view, on the admitted and indisputable facts set out above, namely, the recall of our earlier order of the Court, it becomes mandatory for the Court to restore the *status quo ante* prevailing on the date of its first order. ....."

In para 23 of ***Aligarh Muslim University***'s case
(2 supra), the Supreme Court observed that:

> "23. **Chinnappa Reddy, J. in S.L. Kapoor** case [(1980) 4 SCC 395] laid down two exceptions (at SCC p.395) namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

(5) So merely because principles of natural justice are violated an order need not be set aside, if such setting aside, revives another unjust or unjustifiable order.

(6) The effect of the order impugned is restoration of *status quo* as on the date of death of the deceased. If the order impugned is set aside, the transfer in favour of the petitioner, made without notice to respondents 4 to 12, which is unjust and improper, would get revived. Such revival cannot be permitted more so because as per Muslim law, a bequest to an heir is not valid unless the other heirs consent to the bequest after the death of the testator and a single heir may consent so as to bind his own share and a bequest to an heir, either in whole or in part, is invalid, unless consented to by other heir or heirs and whosoever consents, the bequest is valid to that extent only and binds his or her share. Neither inaction nor silence can be the basis of implied consent- See [(***Narunnissa v. Sheikh Abdul Hamid*** (AIR 1987 Karnataka, 222)], and since it is not the case of the petitioner that respondents 4 to 12 consented to the bequest allegedly made in her favour by the deceased in the registered Will said to have been executed by her, the truth, validity and genuineness of which also have to be established by the petitioner.

(7) Therefore, I do not find any grounds to set aside the order impugned and so the petition is dismissed. 3rd respondent after issuing notices to petitioner and respondents 4 to 12, can decide the question of transfer of the lease given to the deceased on 04-10-1955 to the petitioner, after affording a due opportunity of being heard. No costs.

C.Y. SOMAYAJULU, J

13th April, 2005

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Note: L.R. copy to be marked

(B/o.)

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ASSISTANT REGISTRAR

To

1. One fair copy to the Hon'ble Sri Justice C.Y.Somayajulu (for his Lordship kind perusal)

2. The Secretary, Government of A.P., Revenue Department,

Secretariat Building, Hyderabad.
3. The Chairman, Zilla Parishad, West Godavari District at Eluru.
4. The Chief Executive Officer, Zilla Parishad, West Godavari District at Eluru.
5. Two CCs to G.P. for Panchayat Raj & Rural Development,

High Court Buildings, Hyderabad (OUT).

6. Two CD copies.

7. Eight L.R. copies.

8. The under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

9. The Secretary, A.P. Advocates Association, Library, High Court of A.P.

Hyderabad.